



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

### Color Country District Office

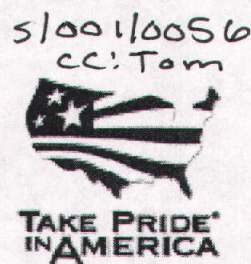
#### Cedar City Field Office

176 East DL Sargent Drive

Cedar City, UT 84721

Telephone (435) 586-2401

[www.blm.gov/ut/st/en/fo/cedar\\_city.html](http://www.blm.gov/ut/st/en/fo/cedar_city.html)



### In Reply Refer To:

UTC01

3809: UTU-78613

RECEIVED

JAN 31 2011

DIV. OF OIL, GAS & MINING

January 26, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
#7010 0780 0002 2489 6231

## DECISION

Operator: David Penney  
Penney's Gemstones, LLC  
2400 E 30 S  
P.O. Box 312  
Beaver, UT 84713-0312

Notice: UTU-78613  
Project Name: Lost Gems

### Notice Expired Reclamation Required

Notice UTU-78613 was filed with this office on June 8, 2000, and acknowledged as complete via letter dated June 22, 2000. Following the implementation of the new 43 CFR 3809 regulations, effective January 21, 2001, the notice was timely extended and reclamation bonded by the regulatory deadline of January 21, 2003. In compliance with section 3809.333 of those new regulations (requiring that an operator wishing to extend their notice must notify the BLM in writing on or before the two-year anniversary date of the notice), you timely re-extended the notice on or before the two-year anniversary date of the 2003 date, in 2005, 2007, and 2009. This office did not receive written notification to extend the UTU-68596 notice on or before the 2011 anniversary date of January 21, 2011; consequently, your notice expired on January 22, 2011.

Pursuant to 43 CFR 3809.335, you must immediately cease all operations with the exception of reclamation. The most recent inspection of the notice area, made on July 8, 2010, revealed some remaining reclamation obligations. **To ensure that you meet the standards described in 3809.335(a)(2), the following items must be completed:**

1. Re-contour surface prospect pits created under this notice (refer to item on the enclosed Reclamation Standards), and
2. Scarify and seed disturbed prospect pits site (refer to item 6 on the enclosed Reclamation Standards).

You must notify this office before you start reclamation and again upon completion of reclamation. BLM will schedule an inspection to verify whether you have met your reclamation obligations and notify you promptly in writing of the results of the inspection and close your notice if appropriate.

Your reclamation obligation continues beyond the expiration of your notice until such time as BLM determines that the reclamation is satisfactorily completed. Failure to begin reclamation promptly or to conduct reclamation to BLM specified standards is subject to the enforcement actions specified in 43 CFR 3809.601 to 43 CFR 3809.701



If you wish to resume operations you may postpone reclamation if you file either a new notice pursuant to 43 CFR 3809.301. The notice must be accepted and a financial guarantee accepted prior to any additional earth disturbing activities occurring at this site. If the newly submitted notice is not accepted, you must begin reclamation within 30 days of BLM's decision finding that the new notice is incomplete or unacceptable.

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR 3809.804, you may request that the Utah BLM State Director review this decision. If you request a State Director review, the request must be received in the Utah BLM State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director. Standards for obtaining a stay are given below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the State Director does not make a decision your request for review of this decision within 21 days of BLM's receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the Utah BLM State Office to determine when BLM receives the request for State Director Review. You have 30 days from the end of the 21 day period in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass a State Director review, this decision may be appealed directly to the IBLA in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (Cedar City Field Office, 176 East DL Sargent Drive, Cedar City, UT 84721) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

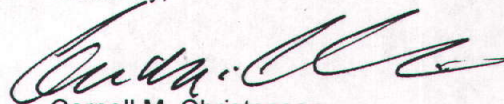
If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Sincerely,



Cornell M. Christensen  
Field Office Manager

Enclosure: Reclamation Standards for Cedar City Field Office  
cc: Tom Munson, DOGM (UDOGM file S/001/0056)



**RECLAMATION STANDARDS**  
**for**  
**Exploration/Mining Activities, BLM Cedar City Field Office**

1. At the earliest feasible time, the operator will reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization. Reclamation will include reasonable measures to prevent or control onsite and offsite damage of public lands.
2. Reclamation will include but not be limited to:
  - a. Saving topsoil (top 3 to 6 inches) for final application after reshaping of disturbed areas.
  - b. Controlling erosion, landslides, and water runoff.
  - c. Isolating, removing, or controlling toxic materials.
  - d. Reshaping disturbed areas, applying topsoil, and revegetating where reasonably practicable.
  - e. Controlling noxious weeds invading the site.
  - f. Rehabilitating fisheries and wildlife habitat.
3. Access roads, unless otherwise approved by the authorized officer, will be closed by reshaping the disturbed area to near original contours, scarifying where compaction prevents seed covering, and revegetating with the mixture specified below. Water bars will be placed on steep inclines and access blocked to future vehicular traffic.
4. Unless otherwise approved in the acceptance of the notice, all high walls or material piles will be recontoured to slopes not steeper than 3:1 and revegetated using the recommended mixture.
5. Authorized pits with high walls in excess of 4 feet will be fenced or barricaded to protect unsuspecting public land users from injury. All shafts and adits will be covered or blocked to prevent unauthorized or accidental entry.
6. Seeding of disturbed areas will be done between September 30 and December 15. Seed should not be placed on top of deep snow. Seed beds will be prepared to a depth of 6 inches by ripping, discing, or harrowing. Seed will be planted with a rangeland or farm drill or broadcast seeded. If broadcast seeded, the seed will be harrowed or raked  $\frac{1}{4}$  to  $\frac{1}{2}$  inch into the soil. The seed amount described below will be doubled if the area is broadcast seeded. The recommended seed mixture to be used on all disturbed areas if applied by a drill includes:

Blue-bunch wheatgrass	2 lb / acre
Indian ricegrass (var. Nezpar)	1 lb / acre
Smooth brome grass	1 lb / acre
Pubescent wheatgrass	1 lb / acre
Small Burnet	1 lb / acre
Fourwing saltbush	$\frac{1}{2}$ lb / acre
Bitterbrush	$\frac{1}{2}$ lb / acre
Lewis Flax	$\frac{1}{2}$ lb / acre
Palmer Penstemon	$\frac{1}{2}$ lb / acre
7. All hazardous tailing dumps, materials or substances produced by the operation will be disposed of in accordance with applicable federal and state laws. All waste, debris, buildings, and materials will be removed from the site and deposited at appropriate waste facilities.
8. All dry drill holes will be plugged with uncontaminated native material to a depth of 5 feet. The top 5 feet will be plugged with cement. Drill holes which encounter water will also be cemented from at least 50 feet below to 50 feet above the saturated zone. The location, depth, and relative flow rate of any subsurface water encountered will be reported to the authorized officer.
9. Additional reclamation requirements may be needed on a case-by-case basis. These additional requirements will be issued by the authorized officer after consultation with the operator.
10. The authorized officer will be notified within 10 days of final reclamation.